

Retail Clerks' Union Local No. 648, United Food & Commercial Workers International Union, AFL-CIO and Iyad Nasrah and George Nasrah, d/b/a Daniel's Pharmacy. Case 20-CP-1019

January 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by Iyad Nasrah on behalf of Daniel's Pharmacy, the Charging Party (also the Employer), on August 5, 1991,¹ the General Counsel of the National Labor Relations Board issued a complaint on August 14 against Retail Clerks' Union Local No. 648, United Food & Commercial Workers International Union, AFL-CIO, the Respondent, alleging that it has violated Section 8(b)(7)(C) of the National Labor Relations Act.¹ Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On December 20, the General Counsel filed a Motion for Summary Judgment. On December 26, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint

shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel notified the Respondent and its attorney (1) by letter dated September 11 that an answer to the complaint had not been received and that if an answer was not received by October 18 a Motion for Summary Judgment would be filed with the Board; and (2) by letter dated October 3 that an answer to the complaint was due by close of business October 8, rather than October 18 as stated in the September 11 letter, and that if an answer was not received by October 8 a Motion for Summary Judgment would be filed with the Board.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Daniel's Pharmacy (the Employer), a California partnership with an office and place of business in San Francisco, California (the facility), has been engaged in the retail sale of prescription drugs and health care products at its business address, 943 Geneva Avenue, San Francisco, California 94112. During the 12-month period ending June 30, 1991, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 from the retail sale of prescription drugs and health care products, and purchased and received at its facility products, goods, and materials valued in excess of \$5000 which originated outside the State of California. We find that the Employer is and has been at all material times an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7), and 8(b)(7)(C) of the Act.

The Respondent is an unincorporated association with an office in San Francisco, California, and is an organization in which employees participate and which exists in whole or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. We find that the Respondent is and has been at all material times a

¹ All dates are 1991 unless otherwise stated.

² Sec. 8(b)(7)(C) provides in pertinent part that:

(b) It shall be an unfair labor practice for a labor organization or its agents—

(7) to picket . . . any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees . . . unless such labor organization is currently certified as the representative of such employees:

(C) where such picketing has been conducted without a [representation] petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: . . . *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing . . . for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services [emphasis in original]. Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

labor organization within the meaning of Sections 2(5) and 8(b)(7)(C) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since February 5 and continuing through the date of the issuance of the complaint, August 14, the Respondent has picketed the Employer's facility with placards bearing the following message:

STORE
NON UNION
PLEASE
DO NOT PATRONIZE
DANIELS [SIC]
PHARMACY
RETAIL CLERKS [SIC] UNION # 648
UFCW AFL-CIO
Sanctioned by S.F. Labor Council
& Joint Council of Teamsters #7

The Respondent has not at any material time been certified pursuant to Section 9 of the Act as the exclusive bargaining representative of any employees of the Employer.

The picketing described above has been conducted for more than 30 days from its commencement without the filing of a petition under Section 9(c) of the Act for an election of a collective-bargaining representative for any of the employees of the Employer.

An object of the Respondent's picketing has been to force or require the Employer to recognize and bargain with the Respondent as the representative of certain of the Employer's employees.

An effect of the Respondent's picketing has been to induce individuals employed by United Parcel Service, Roadway Express, and other persons to refuse to deliver goods and perform services for their employers.

We find that by engaging in the above-described picketing the Respondent has violated Section 8(b)(7)(C) of the Act as alleged.

CONCLUSIONS OF LAW

The Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(b)(7)(C) and Section 2(6) and (7) of the Act, by picketing the Employer's facility for more than 30 days without the filing of a petition under Section 9(c) of the Act for a Board election, where an object of the picketing was to force or require the Employer to recognize and bargain with the Respondent as the representative of certain of the Employer's employees and also where an effect of the picketing was to induce individuals employed by United Parcel Service, Roadway Express, and

other persons to refuse to deliver goods or perform services for their employers.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Retail Clerks' Union Local No. 648, United Food & Commercial Workers International Union, AFL-CIO, San Francisco, California, its officers, agents, and representatives, shall

1. Cease and desist from picketing the Employer, Daniel's Pharmacy, for more than 30 days without the filing of a petition under Section 9(c) of the Act for a Board election, where an object of the picketing is to force or require the Employer to recognize and bargain with the Respondent as the representative of certain of the Employer's employees or where an effect of the picketing is to induce individuals employed by United Parcel Service, Roadway Express, or other persons to refuse to deliver goods or perform services for their employers.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business office copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 20 signed copies of the notice for posting by Daniel's Pharmacy, if willing, in places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT picket Daniel's Pharmacy for more than 30 days without the filing of a petition under Section 9(c) of the Act for a National Labor

Relations Board election, where an object of the picketing is to force or require Daniel's Pharmacy to recognize and bargain with us as the representative of certain employees of Daniel's Pharmacy or where an effect of the picketing is to induce individuals employed by United Parcel Service, Roadway Express, or other persons to refuse to deliver goods or perform services for their employers.

RETAIL CLERKS' UNION LOCAL NO.
648, UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL UNION,
AFL-CIO